

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Mr. Albert Perry  
5075 County Road 47  
Midway, Alabama 36053

Order No. 09 -xxx -SW

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

3. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2008 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be

dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

4. Ala. Code § 22-27-4(b) (2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

5. Ala. Code § 22-27-10(b) (2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

6. ADEM Admin. Code r. 335-13-1-.13 (1) (a) declares that open or unauthorized dumps are prohibited.

7. On January 7, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of Mr. Albert Perry (hereinafter “Mr. Perry”) at 5075 County Road 47, Midway, Alabama (Bullock County). The UAD consisted of approximately 50 wooden wire spools.

8. On January 26, 2009, the Department issued a Notice of Violation (hereinafter “NOV”) to Mr. Perry for operating an UAD.

9. The Department did not receive a response to the January 26, 2009, NOV.

10. On March 16, 2009, the Department issued a Failure to Respond letter to Mr. Perry which requested a response to the January 26, 2009, NOV.

11. The Department did not receive a response to the March 16, 2009, Failure to Respond letter.

## CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A.     SERIOUSNESS OF THE VIOLATION: Mr. Perry did not comply with any requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any threat to human health, or any threat to the safety of the public as a result of these violations.

B.     THE STANDARD OF CARE: Mr. Perry failed to abide by any applicable solid waste requirements.

C.     ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Perry has realized a significant economic benefit as a result of the violations noted. However, Mr.

Perry did not incur costs associated with operating in accordance with Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts employed by Mr. Perry to mitigate any potential effects on the environment resulting from the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of applicable solid waste requirements.

F. THE ABILITY TO PAY: Mr. Perry has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000

### **ORDER**

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), and 22-27-7, it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Perry shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations

cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P O Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Perry's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Perry shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, Mr. Perry shall submit an abatement plan to the Department in accordance with ADEM Admin. Code div. 335-13. This plan shall include a schedule for abatement completion. Mr. Perry shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

1. Time period in which the abatement activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.
6. Documentation that the site was seeded and mulched to prevent erosion.

7. Documentation that the site has been secured to prevent any future illegal dumping.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Perry for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Perry for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Onis "Trey" Glenn, III  
Director

## CERTIFICATE OF SERVICE

I, \_\_\_\_\_, hereby certify that I have this date  
served the foregoing Administrative Order on \_\_\_\_\_  
by regular United States Mail, properly addressed and postage prepaid to:

Mr. Albert Perry  
5075 County Road 47  
Midway, Alabama 36053

Done this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Name